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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/757,744      | 01/15/2004  | Michael James Pratt  | 9279.79             | 4294             |

7590 11/16/2005

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EXAMINER

WEAVER, SUE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3727

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/757,744             | PRATT ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Sue A. Weaver          | 3727                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-15 and 17-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-9 and 12-14 is/are allowed.
- 6) ☒ Claim(s) 10,11,15,17-23, and 25-35 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 10/17/05 has been entered.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 32 remains rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim remains rejected for the reasons set forth in paragraph 3 of the previous Office action.

3. Claims 10, 11, 15, 17-23, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants are advised that there is insufficient structural relationship set forth between the pouch of claim 8 and a bag for a grip element coupled to the pouch to effect leverage and transport of the bag as claimed in claim 10. Insofar as the bag is claimed it is an isolated element.

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It appears that something was left out of claim 15. Applicants claimed "at least one biasing element longitudinally disposed," but the biasing element is isolated and unconnected and therefore is incapable of biasing anything, as claimed.

There also doesn't appear to be sufficient structural relationship set forth in claims 25 or 29 between the bag and pocket member for a grip element on the pocket member to effect the function claimed of leveraging and transport of the bag.

As noted in the previous office action "an opening" on line 2 of claim 30 appears to be a double inclusion of that set forth in claim 25.

4. Claims 25-27, 30, 31 and 34 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Bieber et al in view of T Johnson '071 for the reasons set forth in the Office action of 3/8/05.

Claim 28 remains rejected under 35 U.S.C. 103(a) as being unpatentable over the reasons as applied to claim 25 above, and further in view of Alter for the reasons set forth in paragraph 7 of the office action of 3/8/05.

5. Claims 25-27, 30 and 31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Horiuchi in view of Bieber et al for the reasons set forth in paragraph 6 of the previous Office action of 7/9/05.

6. Claim 32, insofar as it is supported remains rejected under 35 U.S.C. 102(a) as being anticipated by Chi for the reasons set forth in paragraph 7 of the previous office action.

7. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Bieber et al '340, of record.

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Member 45 defines the biasing means on the pocket of the bag member of Bieber et al.

8. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appel '624 in view of Chi, both of record.

Note the clam like pocket in the bag of Appel which is hinged at 14. Member 26 is secured to the pocket to limit its movement and moreover, may be made of elastic therefore providing a biasing means. In any event to have made the strap as a means to bias the pocket closed would have been obvious in view of Chi. Note the tab at 28 defining a user grip.

9. Applicant's arguments filed 10/17/05 have been fully considered but they are not persuasive. Contrary to applicants' arguments the side panel identified as 10 in figures 2 and 3B appears to be rectangular, not triangular as claimed.

Furthermore applicants do not appear to have identified any such description of a triangular side panel. It is the rod which is described as being of elastomeric material, not the side panel.

10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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Contrary to applicants' arguments, Bieber et al clearly do teach the use of the biasing member to close the pocket. Not the case as argued. Moreover the biasing member is clearly shown attached to the pocket member at 50.

Chi does indeed teach the option of making the pocket gusset of elastic.

11. Claims 1, 3-9 and 12-14 are allowed, while claims 2 and 16 have been canceled.

12. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 6 to 4:30.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SUE A. WEAVER**  
**PRIMARY EXAMINER**  
**GROUP 3700**

SW